quarters of all taxpayers use the standard deduction and would benefit from this increase.

In addition, our plan would repeal the 1993 Clinton tax increase on Social Security benefits. In 1993, President Clinton imposed this tax increase on the elderly's benefits because he said it was needed to eliminate the budget deficit. Since there is no longer a deficit, we no longer need this tax. It is time to repeal this unnecessary surcharge on Social Security recipients.

The second goal is economic growth.

The U.S. economy is enjoying unprecedented prosperity. In fact, our economy has grown for more than 16 years with only 9 months of recession. That is the longest period with only 9 months of recession since at least the 1850s! But while my Washington colleagues and I may be able to take pride in the performance of the economy, we really cannot take credit. The credit for the strength of our economy belongs to the American people—because the strength of our economy is a tribute to every American who uses his or her freedom to turn work into reward. To every individual who turns energy into a business plan—an idea into a new product.

These are the heroes of the American economy—the entrepreneurs and innovators who are creating economic growth, generating trillions in new wealth and reordering the global economy. We must provide pro-growth tax cuts that will ensure the continued strength of our economy and allow our entrepreneurs and innovators to flourish.

My plan would provide pro-growth tax cuts that would spur economic growth in four ways: by cutting capital gains tax rates 25 percent to 7.5 percent and 15 percent and indexing them for inflation; by cutting dividend taxes to 7.5 percent and 15 percent, making them uniform with capital gains tax rates; by repealing estate and gift taxes; and by indexing the individual AMT exemption amount.

Lowering capital gains tax rates will stimulate greater investment and keep the economy humming. Indexing capital gains for inflation will end the Government's unfair practice of taxing people on phantom gains due to inflation.

Currently, people earning dividends face among the highest tax rates in the Tax Code—as high as 60 percent—because they are double-taxed. Many investors, particularly the elderly, count on their dividends as a major source of income during their retirement years. Therefore, this change would have a significant, positive impact on their standard of living. Furthermore, the Tax Code would no longer encourage companies to hold onto locked-in earnings that investors could use more wisely. By making the dividend and capital gains rate uniform, this plan eliminates the current bias against dividend income, making investing a more level playing field.

Another major problem with the Tax Code concerns the alternative minimum tax, AMT. The AMT was designed to ensure that all taxpayers paid their fair share of taxes, but in recent years it has become an additional tax burden on middle income taxpayers for whom it was never intended. Since the AMT exemption amount was never indexed for inflation, each year more and more taxpayers are subject to it. My plan would stop this AMT creep by indexing the exemption amount for inflation, and relieve the unintended consequences of this counterproductive tax that undermines other tax relief already provided in the Tax Code.

My plan also calls for the elimination of the estate and gift tax, sometimes referred to as the death tax. Death and taxes may be inevitable, but they should never be simultaneous. Death taxes are among the worst provisions in the Tax Code, imposing tax rates as high as 55 percent. After paying taxes all your life—surely people shouldn't have to pay even more taxes upon their death. That is just not fair, and this tax should be abolished.

The third goal is to maintain U.S. technological leadership in the 21st century.

Last, but definitely not least, my plan recognizes the importance of the technology industry to the success and continued growth of the U.S. economy. We need to maintain policies that give the strongest possible support to innovation, and my plan seeks to do this in two ways: by making the research and development tax credit permanent, and by raising the capital expensing limit from $25,000 to $500,000, indexed for inflation.

Studies have shown that the R&D tax credit creates $2 of research and development for every one dollar of credit. It more than pays for itself, and we need to quit playing games with it. Our current practice—extending it one year at a time, letting it expire and then bringing it back to life—is completely counterproductive. No company can plan and invest for the long-term against a policy that changes every 12 months. This inefficiency impedes innovation and will make it more difficult for the United States to maintain its technological edge in the 21st century.

Especially in high technology industries, rapid innovations are rendering equipment obsolete within a year. We are all familiar with this phenomenon regarding computers. But, the same problems arise with medical, telecommunications and other high-tech equipment. Under current law, companies are required to spread these costs over time periods of five or more years. Under my plan, the capital expensing limit would be raised from $25,000 to $500,000 so companies would be able to keep pace with ever-changing technology. This will particularly stimulate investment in small firms.

Mr. President, to sum up my tax plan, it would provide $140 billion in tax relief over the next 5 years and $755 billion over 10 years—well within the estimated $800 billion surplus in this year's budget proposal.

I think it is important to take a minute to look at who would benefit from the majority of the cuts I discussed today. In the context of my plan, I think it's important to stress that over one-half of the tax relief associated with the individual tax cuts would flow to households earning less than $75,000 a year. In addition, nearly one-third of my tax plan would go to people with incomes under $50,000, who currently pay 22 percent of taxes. So, in addition to providing cuts for economic growth and ensuring the U.S. remains a technological leader, my plan provides substantial relief for all American income taxpayers, and simplifies our burdensome Tax Code.

Mr. President, we are living in a new economy. And right now, the world is playing America's game. We can outperform, out-produce, out-compete, and out-create anyone in the world. We need to ensure the United States keeps its status as an economic powerhouse in the 21st century. The Federal Government's role in ensuring this happens is to get out of the way and give the American people freedom—the freedom to work, the freedom to invest, the freedom to support our families, and the freedom to continue strengthening our economy. Our plan does just that—cuts taxes and gets the Government out of the way to give the American people the freedom to pursue their own dream—not Washington's.

Mr. President, I yield the floor.

Mr. GRAMM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FINANCIAL SERVICES MODERNIZATION ACT OF 1999

The Senate continued with the consideration of the bill.

Mr. GRAMM. Mr. President, I ask unanimous consent that following the 11:30 vote, Senator Johnson be recognized to offer an amendment related to thrifts, and, further, the time on the Johnson thrift amendment—this is the unitary thrift amendment, for those who want to engage in the debate—that time on the Johnson thrift amendment, prior to the motion to table, be limited to 60 minutes, equally divided, and no amendment be in order prior to the motion to table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. Mr. President, I rise to make a few remarks concerning Senate Amendment 308 to S. 900, the Financial Services Modernization bill. Unfortunately, I was unable to vote on this amendment because I was out in Wichita with Vice President GORE and FEMA director James Lee Witt surveying the enormous damage that was caused by the tragic tornadoes that passed through Kansas on Monday. These fatal tornadoes that swept through the Wichita area on Monday caused 5 Kansans to lose their lives and injured more than 70 people. More than 500 homes have been damaged or destroyed, leaving many people homeless and without power. In the town of Haysville, 27 businesses have been wiped out, virtually eliminating the business district of this Wichita suburb. I am pleased that federal relief for the Wichita area is on the way and I will continue to assist federal, state, and local authorities as they help the people of Wichita recover from this natural disaster.

I support Senate Amendment 308 and would have voted for it if I had been present. This amendment was passed in the Senate by a vote of 95–2 and I believe that it will strengthen an already strong financial modernization bill. The Financing Corporation bonds (FICO) provision in the Financial Modernization bill would require Savings Association Insurance Fund (SAIF) institutions, or thrifts, to pay premiums at a rate five times higher than that paid by banks in the Bank Insurance Fund (BIF) for three more years before merging both funds. Under the Funds Act of 1996, these funds were supposed to merge on January 1, 2000 and all FDIC institutions were to pay an equal amount. This amendment would strike the FICO provisions in S. 900 and equalize the deposit insurance premiums of bank and thrift institutions.

I hope we now can move forward with the passage of the Financial Services Modernization bill. S. 900 would permit banking, securities, and insurance companies to exist within a single corporate structure. This could lead to greater competition and more innovative and consumer-responsive services. Competition would not only benefit consumers, but will help America's employers by making it easier and cheaper for them to raise the capital they need for growth.

I am especially pleased that S. 900 would modernize the Federal Home Loan Bank System (FHLB) by banks. Under S. 900, the FHLB System would be easily accessible as an important source of liquidity for community lenders and would enable community banks to post different types of collateral for various kinds of lending.

Community banks are finding it increasingly tough to meet deposit and withdrawal demands as customers shift their deposits into higher-yielding investments like mutual funds. With less liquidity, there isn't as much money available for lending as the community demands. A reduction in community lending will hurt the economies of these small communities. This bill will facilitate more small business, agriculture, rural development, and low-income community development lending in rural communities.

Mr. GRAMM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the amendment.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from Kansas (Mr. BROWNBACK) is necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 2, as follows:

[Rollcall Vote No. 102 Leg.]

YEAS—95

Abraham	Feingold	Lugar
Akaka	Feinstein	McCain
Allard	Frist	McConnell
Ashcroft	Gorton	Mikulski
Baucus	Graham	Moynihan
Bayh	Gramm	Murkowski
Bennett	Grams	Murray
Bingaman	Grassley	Reed
Bond	Gregg	Reid
Boxer	Hagel	Robb
Breaux	Harkin	Roberts
Bryan	Hatch	Rockefeller
Bunning	Helms	Roth
Burns	Hollings	Santorum
Byrd	Hutchinson	Sarbanes
Campbell	Hutchison	Schumer
Chafee	Inhofe	Sessions
Cleland	Inouye	Shelby
Cochran	Jeffords	Smith (NH)
Collins	Johnson	Smith (OR)
Conrad	Kennedy	Snowe
Coverdell	Kerrey	Specter
Craig	Kerry	Stevens
Crapo	Kohl	Thomas
Daschle	Kyl	Thompson
DeWine	Landrieu	Thurmond
Dodd	Lautenberg	Torricelli
Domenici	Leahy	Voinovich
Dorgan	Levin	Warner
Durbin	Lieberman	Wellstone
Edwards	Lincoln	Wyden
Enzi	Lott	

ANSWERED ''PRESENT''—1

FITZGERALD

NOT VOTING—2

BROWNBACK BIDEN

The amendment (No. 308) was agreed to.

Mr. SANTORUM. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from South Dakota is recognized.

AMENDMENT NO. 309

(Purpose: To make an amendment with respect to the Federal deposit insurance funds and unitary savings and loan holding companies)

Mr. JOHNSON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The Senator from South Dakota (Mr. JOHNSON), for himself, Mr. THOMAS, Mr. KERREY, Mr. DASCHLE, Mr. DORGAN, Mr. KOHL, and Mrs. LINCOLN, proposes an amendment numbered 309.

Mr. JOHNSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 149, strike line 12 and all that follows through page 150, line 21 and insert the following:

SEC. 601. PREVENTION OF CREATION OF NEW S&L HOLDING COMPANIES WITH COMMERCIAL AFFILIATES.

(a) IN GENERAL.—Section 10(c) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)) is amended by adding at the end the following new paragraph:

''(9) PREVENTION OF NEW AFFILIATIONS BETWEEN S&L HOLDING COMPANIES AND COMMERCIAL FIRMS.—

''(A) IN GENERAL.—Notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after May 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—

''(i) under paragraph (1)(C) or (2) of this subsection; or

''(ii) for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956.

''(B) PREVENTION OF NEW COMMERCIAL AFFILIATIONS.—Notwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).

''(C) PRESERVATION OF AUTHORITY OF EXISTING UNITARY S&L HOLDING COMPANIES.—Subparagraphs (A) and (B) do not apply with respect to any company that was a savings and loan holding company on March 4, 1999, or that becomes a savings and loan holding company pursuant to an application pending before the Office on or before that date, and that—

''(i) meets and continues to meet the requirements of paragraph (3); and

''(ii) continues to control not fewer than 1 savings association that it controlled on March 4, 1999, or that it acquired pursuant to an application pending before the Office on or before that date, or the successor to such savings association.

''(D) CORPORATE REORGANIZATIONS PERMITTED.—This paragraph does not prevent a transaction that—

''(i) involves solely a company under common control with a savings and loan holding

company from acquiring, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company; or

''(ii) involves solely a merger, consolidation, or other type of business combination as a result of which a company under common control with the savings and loan holding company acquires, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company.

''(E) AUTHORITY TO PREVENT EVASIONS.—The Director may issue interpretations, regulations, or orders that the Director determines necessary to administer and carry out the purpose and prevent evasions of this paragraph, including a determination that, notwithstanding the form of a transaction, the transaction would in substance result in a company acquiring control of a savings association.

''(F) PRESERVATION OF AUTHORITY FOR FAMILY TRUSTS.—Subparagraphs (A) and (B) do not apply with respect to any trust that becomes a savings and loan holding company with respect to a savings association, if—

''(i) not less than 85 percent of the beneficial ownership interests in the trust are continuously owned, directly or indirectly, by or for the benefit of members of the same family, or their spouses, who are lineal descendants of common ancestors who controlled, directly or indirectly, such savings association on March 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before March 4, 1999; and

''(ii) at the time at which such trust becomes a savings and loan holding company, such ancestors or lineal descendants, or spouses of such descendants, have directly or indirectly controlled the savings association continuously since March 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before March 4, 1999.''.

(b) CONFORMING AMENDMENT.—Section 10(o)(5)(E) of the Home Owners' Loan Act (15 U.S.C. 1467a(o)(5)(E)) is amended by striking '', except subparagraph (B)'' and inserting ''or (c)(9)(A)(ii)''.

Mr. SARBANES. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. JOHNSON. Certainly.

Mr. SARBANES. Mr. President, it is my understanding that there are 60 minutes of debate equally divided.

The PRESIDING OFFICER. That is correct, before a motion to table.

PRIVILEGE OF THE FLOOR

Mr. JOHNSON. Mr. President, I ask unanimous consent that Mr. Steven Miteff, who has served in my office for 2 months as a participant in USDA's Senior Executive Service Candidate Development Program, be provided floor privileges during today's consideration of S. 900.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSON. Mr. President, today I am offering an amendment for myself and Senators THOMAS and KERREY. I thank Senators DASCHLE, DORGAN, KOHL, and LINCOLN, who are also cosponsors of this amendment.

I believe that several of my colleagues plan to speak in behalf of this important effort.

This amendment addresses the issue of unitary thrift charters.

Initially this amendment also dealt with an unnecessary owners provision that needlessly penalizes thrifts by removing the FICO insurance differential from the underlying bill. However, Chairman GRAMM has offered an amendment that accomplishes that portion of the original amendment. Nonetheless, the remaining unitary thrift issue must be addressed, and that is what this amendment does.

Thrifts are different from banks. Many believe that a thrift charter is superior to a bank charter. It gives thrifts more flexibility. It also demands certain specific things of them.

We recently went through an extensive debate over the merits of the thrift charter. I don't want to open old debates. I do seek, however, to close a loophole that permits the dangerous combination of banking and commerce. Under current law, commercial firms can own and operate unitary thrifts. That is the only breach of the banking and commerce firewalls currently allowed under our financial services law. Of course, the Glass-Steagall repeal and other opponents of this legislation open a range of financial activities to each other. But this bill is carefully structured to prevent the mixing of banking and commerce and closes the single loophole that remains where banking and commerce can mix.

Let me explain what this amendment would to. There has been some misperception floating around about it. But I have made the language available for review now for a number of days.

The Johnson-Thomas-Kerrey amendment does not interfere with the current ownership of thrifts. Any commercial firms that currently own a unitary thrift charter will be able to continue to own and operate their institution without restriction. Their current status would be undisturbed. Existing unitary thrifts would be grandfathered and can still sell themselves to any of the thousands of other financial entities that exist in our country. There will remain a strong market for the sale of unitary thrifts—no doubt about that.

The only limitation this amendment would impose involves the transferability of the charter. The charter would not be transferable to another commercial entity. Any bank, insurance company, or security firm that wanted to acquire a charter could do so. A new entity could be created to operate that thrift.

This amendment brings the two issues that concern the thrift industry to a consensus compromise which addresses the issues most critical to average banks and average thrifts. It restores the language agreed to in last year's agreement effort in H.R. 10. That agreement, which is embodied in this amendment, was supported by the banks and by the thrifts. It also received the overwhelming support of the Senate Banking Committee. House Banking Committee Chairman LEACH also supports closing this loophole.

Moreover, this amendment would further the goals of financial modernization by leveling the playing field between banks and thrifts and remove the dangerous threat of further weakening the walls between banking and commerce.

OTS Director Seidman acknowledges that requests have been made by thrifts to relax the current restrictions on commercial lending, and as we enter a new world of one-stop-shopping financial services, pressure will no doubt only increase to allow more charters to be further exploited.

This amendment has the strong support of the American Bankers Associations and the Independent Community Banks of America. The amendment is the top priority of the banking associations relative to this bill, which is the most important legislation, as we all know, impacting financial institutions which Congress will address this year. This week, bankers from all across the country were here in Washington to speak with their Senators about the importance of this amendment.

The amendment also has the strong support of the Secretary of the Treasury, Robert Rubin. Secretary Rubin has long articulated the dangers of mixing banking and commerce and expressed concern about the unitary thrift loophole.

The Chairman of the Federal Reserve Board, Alan Greenspan, advocates closing this loophole. He testified before the Senate Banking Committee several times on this point. Let me quote Chairman Greenspan directly:

> In light of the dangers of mixing banking and commerce, the [Federal Reserve] Board supports elimination of the unitary thrift loophole, which currently allows any type of commercial firm to control a federally insured depository institution. Failure to close this loophole now would allow the conflicts inherent in banking and commerce combinations to further develop in our economy and complicate efforts to create a fair and level playing field for all financial service providers.

We might keep in mind the recent experiences in Japan. Part of their economic and financial crisis can be directly attributable to the keiretsu system that closely binds banks and commercial firms. Although our current system is a long way from that level of mixing banking and commerce, I concur with Secretary Rubin and Chairman Greenspan in the potential dangers.

Other observers have noted the dangers posed by the unitary thrift loophole, including former Federal Reserve Governor Paul Volcker, who said:

> Recent experience with the banking crises in countries as different in their stages of development as Japan, Indonesia and Russia demonstrates the folly of permitting industrial-financial conglomerates to dominate financial markets and potentially larger areas of the economy. But we need look no further than our own savings and loan crisis in the 1980s. Combinations of insured depository institutions and speculative real estate developers cost American taxpayers, who ultimately stood behind the thrift insurance funds, tens of billions of dollars.

That is former Chairman Volcker.

There are other amendments pending which will purport to address these issues, but we should be clear; this JOHNSON-THOMAS-KERREY amendment is the only amendment that helps average banks and average thrifts. It improves the safety and soundness of our financial system by eliminating the mix of banking and commerce.

I urge support of this effort to join with the expression of views of Secretary Rubin and Chairman Greenspan in what I believe is a commonsense, compromise approach to this critically important issue.

I reserve the remainder of my time.

Mr. GORTON. Mr President, today's thrift industry is an important provider of mortgage loans and consumer financial services.

The thrift industry is required to focus its resources on providing consumer and community-oriented credit. For example, current law requiries a unitary thrift to devote at least 65 percent of its assets to mortgage, consumer, and small business loans. In addition, the commercial lending authority of federal thrifts is strictly limited to 20 percent of assets of which half must be to small businesses.

This ''specialization'' works. The last time Money magazine published an article identifying ''the best bank in America'' for quality and low cost pricing of its services, the recognized institution was a thrift—USAA Federal Savings Bank.

Similarly, the last time Consumer Reports surveyed ''the best deals in 25 cities'' for checking accounts, 77 percent of the leading institutions were thrifts. This large percentage is noteworthy becasue less than 18 percent of the banking institutions existing at the time were thrifts. Thrifts are a minority of the competitor but offer a majority of the best deals.

The unitary thrift structure allows the capital from commercial companies to support the community lending activities of the thrift charter.

More than 166 applications from nonbanking firms have been filed with the federal thrift regulator to charter new thrift institutions since January 1997. These new charters, if approved, will add competition in the marketplace which will benefit the consumer.

The OTS has testified that commercial firms contributed more than $3 billion in capital to support thrift institutions in the 1980s.

No safety and soundness issues have been presented by the unitary charter.

In February 1999, the FDIC testified on the subject of financial modernization before the U.S. House Banking Committee. In its testimony, the FDIC argued that commercial companies have been a source of strength rather than weakness to the thrift industry and that limiting the non-financial activities of thrifts ''would place limits on a vehicle that has enhanced financial modernization without causing significant safety-and-soundness problems.''

Similarly, the OTS director has testified that there is no evidence that the concerns about the mixing of commercial banking and commerce apply to thrift holding companies with commercial affiliates: ''Congress made a deliberate distinction in the treatment of thrifts and their holding companies based on the fact that thrifts cannot engage in the traditional type of banking activity—unlimited commercial lending—that raises concerns with the mixing of banking and commerce.''

The combinations of thrift and commercial firms have compiled an exemplary safety and soundness record. During the height of the thrift crisis, the failure rate of commercially affiliated thrifts was approximately half that of other thrifts. Moreover, the federal thrift regulator has reported that only 0.3 percent of enforcement actions against thrifts and thrift holding companies from January 1, 1993, through June 30, 1997 were against holding companies engaged in non-banking activities. In short, the industry's experience with commercial affiliates has been the opposite of what the critics contend.

Concerns about commercial banking and commerce are misplaced in the context of the thrift charter.

Current federal law expressly prohibits a unitary thrift from extending credit to a commercial affiliate and prohibits a thrift from tying deposits and loan services to non-financial services.

The statutorily mandated focus of the thrift charter on providing mortgage, consumer, and small business credit along with these other lending limitations distinguishes the thrift and commercial banking industries.

Martin Mayer, a guest scholar at the Brookings Institution and foe of mixing banking and commerce, supports the commercial ownership of thrifts because of their unique lending focus on consumers and small businesses.

Financial modernization should be about expanding chartering options and choices for consumers, not contracting these options.

While I believe there is a very strong case for fully maintaining the unitary thrift charter as a viable chartering option going forward, this Congress should, at a minimum, not limit the authorities of existing companies in the absence of any compelling safety and soundness evidence about this charter.

The grandfather provision in S. 900 accomplishes this minimum treatment for these existing companies that are focused on delivering consumer and small business credit in our communities.

The Senate and House Banking Committees both have adopted substantially identical unitary thrift grandfather provisions, which already represents a delicate compromise taken by both committees on this issue. We should not reopen this issue.

I urge you to oppose the Johnson amendment as a serious step backwards in our efforts to modernize our nation's financial services laws.

Mr. GRAMM. Mr. President, I rise in opposition to this amendment. Let me try to set the record straight in terms of this amendment. The argument on the amendment is very simple, and I think it will not take very long to make the case against the amendment.

First of all, we hear the statement made that the unitary thrift provision in current law is a loophole, that somehow commercially owned savings and loans have come into existence as a result of a loophole—hence, as Senator JOHNSON says, ''the unitary thrift loophole.''

Let me remind my colleagues that a loophole had nothing to do with unitary thrifts. In 1967, the Congress passed the S&L Holding Company Act. That S&L Holding Company Act intentionally, after a very large number of hearings in the House and the Senate, intentionally placed into law the provision that allowed commercial companies to own and charter S&Ls. Congress did this for a very simple reason. In fact, the law said clearly, in black and white, the purpose of allowing commercial interests to own S&Ls, hence the creation of what we call a unitary thrift, was to encourage capital and management to come in to the troubled S&L business.

So this new ''loophole'' is no afterthought. This is no mistake. This is no provision that was created by accident. In fact, we had an entire bill, the S&L Holding Company Act, which is the Unitary Thrift Act. That was passed in 1967 after extensive hearings in both the House and the Senate where strong action was taken by both parties in support of this provision.

This is no loophole. This is no accident. This is a creation of Congress that came into existence through a well-reasoned, extensively debated law, and the decision was made to encourage commercial companies to put real capital, real money, and good management into S&Ls.

Let me outline the figures, to give Members the magnitude of the problem. There are 561 thrift holding companies. What is a thrift holding company? A thrift holding company is a company that may be in many different businesses, but it owns a thrift charter. These are 561 thrift holding companies that are engaged in some other business as well as the thrift business. Many are in insurance, many are in securities. There are 561 of them.

Mr. President, 22 are now owned by nonfinancial unitary thrifts. Therefore, 541 of these will be legal under this bill, because it is legal under this bill for an insurance company and a securities company to own a bank, so it will be legal to own a thrift.

What is the ''universe'' we are talking about here in terms of actual commercial interests that own thrifts? The universe is just 22—22 thrift charters that are owned today by a commercial

interest other than insurance and securities that will be able to own banks under this bill.

What is special about these 22 companies? What is special about it is that most of them came into existence during the S&L crisis. I remember vividly offering an amendment to assess the thrifts $15 billion to begin to close troubled thrifts, 3 years before that amendment ever passed. It was defeated in the Banking Committee. I remember Senator DODD voting with me on it; I don't remember exactly how the vote broke down, but I know we lost. During that period, we were desperate to try to get people to put money into troubled S&Ls to try to prevent the taxpayer from ending up paying billions of dollars in defaulted deposits.

Most of these 22 thrifts were commercial companies that were enticed by the Office of Thrift Supervision—the Federal Home Loan Bank Board—to come in and buy troubled thrifts, to bring good management, and to bring in hard cash. And these commercial companies responded. No one would dispute that the S&L collapse cost tens of billions of dollars less than it would have had these commercial companies not come in and invested their hard-earned money in thrifts.

Let me note another thing. You get the idea from this amendment that there is something wrong with unitary thrifts, that there is something wrong with commercial companies owning thrifts. First of all, during the S&L crisis from 1985 to 1992, the default rate of thrifts that ended up going into insolvency—the bankruptcy rate among thrifts that were owned by commercial companies—proportionately speaking, was half the rate of default on thrifts that were not owned by commercial companies. So the plain truth is, today these S&Ls that are owned by commercial interests are among the most stable, most secure S&Ls in America.

Let me also note that in terms of the regulatory review currently underway, consistently those thrifts that are least subject to complaints about violating various provisions of Federal law—the thrifts that behave best in complying with the law—are consistently the unitary thrifts, the thrifts that are owned by a commercial interest.

There is no evidence, therefore, based on any safety and soundness concern, that unitary thrifts are anything less than safer, sounder, better run and, as a result, more compliant with existing law than other thrifts. In fact, the Office of Thrift Supervision has indicated that out of 1,428 enforcement actions against thrifts from January 1993 to June 1997, only 3 of those enforcement actions involved unitary thrifts. These are the best performers and they are the best in terms of complying with the law.

What is the problem here? Under the bill which is pending before the Senate, which passed the Senate Banking Committee, we changed the law so there could be no more unitary thrifts. We have a cutoff date, which is the date the committee markup document was released to the public. As of that day, under our bill no commercial interest can get a new thrift charter.

I think it is important to note that when you look at the applications that are pending—and we have a lot of applications pending for thrift ownership—most of them are by insurance companies and securities companies. They would rather own a bank, but until we pass this bill—and I hope we do pass this bill—they cannot do it, so they have applied to own a thrift. If we pass this bill, many of those applications will be withdrawn. But this amendment does not have anything to do with them.

Of the proposals for unitary thrifts—that is, commercial companies that are trying to buy a thrift charter or get a thrift charter issued—there are only seven of them. So here is the point. This ability of commercial companies to get a thrift charter is over 20 years old. It has existed for 20 years. Any commercial company—from General Motors to A&P, to Kroger's, to Bell Telephone, to whatever—could apply for a thrift charter. For 20 years they have had that right. Mr. President, 22 have done it, 22 have gotten the charter, and most of them got the charter when they were basically cajoled by the Government to do it, to bring in billions of dollars to try to help us solve the S&L problem.

My trusty staff tells me it was 30 years they have had the opportunity—there are 22 of them—not 20 years.

Now, with all the talk of ''runaway unitary thrifts,'' only seven applications are pending. So, what does our bill do and what does the Johnson amendment do? Our bill says that—for the 22 commercial interests, most of whom got into the S&L business as part of our effort to stop the collapse of the S&L industry—our bill says, after the date we introduce the bill, any application coming after that date cannot be considered; that the 7 applications which are already pending can be considered; and the 22 which already exist can continue to operate.

To that extent, the committee bill and the Johnson amendment are very, very similar. The difference is that the Johnson amendment, in addition, provides that if you own a unitary thrift you can't sell it to any other commercial interest; and if you sell a thrift holding company—which, in virtually every case, has a commercial interest—it has to be broken up upon its sale, because you cannot sell it with any commercial interest as part of it.

We have a simple term for this kind of action. It is in the fifth amendment of the Constitution. It is called ''takings.'' This is a constitutional issue. This is not some philosophical position of competition and free enterprise. This is not an issue directly about how we can make the industry better or what might help or harm the consumer. This is about private property. This is a constitutional issue. If we could go back and start this whole thing over again, if we were starting with an absolutely clean slate, I would, in all probability, oppose permitting commercial companies owning thrifts—if we were starting with a fresh slate.

But the problem is, we are starting with 22 companies that have already invested billions of dollars, most of them doing so during the S&L crisis when we begged them to do it. They have now built businesses and part of the value of their franchise is based on their ability to be able to sell it. If it has to be broken up when it is sold, as every thrift holding company would have to be, under the Johnson amendment, if it had any commercial interest—and almost all of them do—the net result is, our estimates are, that the passage of this amendment would destroy between 10 and 15 percent of the value of these S&L charters.

If our colleague from South Dakota had proposed an amendment that would have taken money out of the insurance fund and assessed what it would cost these owners of thrift charters to limit their ability to sell them to other commercial interests, and to require they be broken up if they were sold, and we were going to compensate them from the insurance fund, I might support such an amendment. But the idea that on an ex post facto basis we are going to come in and destroy the value of charters, that we are going to lower their value estimated between 10 and 15 percent simply because we do not have commercial ownership of banks, is simply unconstitutional.

What is going to happen on this? I can tell you what is going to happen: We now have had a series of Supreme Court rulings related to takings. The Supreme Court, thank God, has suddenly awakened to the provision in the fifth amendment which is as important as any provision in the first amendment. In fact, John Locke would have said ''more important.'' The Founding Fathers understood its importance. And that provision says:

> No private property shall be taken for public purpose except through compensation.

How do I know how the Court is going to rule on this? They have already ruled on a similar issue. You remember something called ''supervisory goodwill''? Here is what happened: Congress got a number of businesses to buy troubled thrifts—one of the things we did when we had no money—so the thrift was worth a negative $500 million and they came in, took it over for nothing and assumed its liabilities.

So, having no money to protect the depositors, we said, if you will protect the depositor, we will give you $500 million of regulatory goodwill and for a period of time you can hold it as capital. Do you know what happened? Congress decided that was not a good idea. So we passed a bill, called FIRREA,

that took it back. And these thrifts went to court and argued: We made investments under a certain set of rules, Congress on an ex post facto basis came back and repealed those rules.

They took our property. There was a taking. Congress took billions of dollars from us and, in fact, the Federal Claims Court on April 9 of this year ruled that the Federal Government owes Glendale Federal Bank $990 million in damages for this taking. I remind my colleagues, there is a list of S&Ls which takes up half a page that has exactly the same claim against the Federal Government.

Whether you like the idea of a commercial company owning a thrift—and, I remind you, they have a better record of safety and soundness, they have a better record of performance, they have a better record of complying with the laws and regulations than thrifts as a whole—but even if you don't like it, do you think we have a right to steal their property? Even if you don't like them, do you think Congress has a right now to change the rules and say, ''Oh, yes, you can hold your charter, but if you ever sell it, it will have to be broken up because it has a commercial interest as part of it''?

It is estimated that this amendment, the moment it becomes law, would destroy 10 to 20 percent of the stock value of these companies through a taking.

If we adopt the Johnson amendment, these companies are going to file a lawsuit against the Federal Government.

I believe, based on the rulings that have occurred on regulatory goodwill, that they are going to win these lawsuits, and then where are these billions of dollars coming from? Are they going to come out of the insurance fund? Are they going to come from the taxpayers? Maybe we should have a second-degree amendment that says if this is a taking, we will raise the insurance assessment to raise the money to pay for the taking rather than having it foisted onto the Treasury. I don't know if our colleague from South Dakota would vote for such an amendment, but it seems to me a pretty reasonable amendment.

If we did not have unitary thrifts, I doubt we would create them. I am not ready yet to have commercial companies own banks. I have no doubt in 20 years they will, but we are not ready yet. If we didn't have unitary thrifts, we would not create them.

To sum up, here are the critical points: We did not create unitary thrifts by accident. There is no loophole. The 1967 bill was extensively debated; there were hearings and the bill was adopted overwhelmingly on a bipartisan vote to bring in new capital and new management that was desperately needed.

Thirty-two years later, we are coming in and saying, ''Boy, you have given us those tens of billions of dollars and we really appreciate it, but we're not going to live up to our end of the bargain.'' We are going to say, ''Yes, we took your money and it saved us tens of billions of dollars of taxpayers' money, but now we don't like you anymore, and so if you ever sell your thrift, you are on notice right now your thrift holding company will have to be broken up.''

Unitary thrifts might have become a big problem if we were not considering this financial modernization bill. But if we pass this bill, all but 22 S&Ls that are owned by commercial interests will be owned by insurance companies or securities firms. So this is a problem that some people imagined existed before this bill, but we are talking only about 22 companies and 7 pending applications.

I have received calls from many banks that say they want this amendment passed. But when I explain to them that it might sound like a great idea, until you realize you are taking somebody's property and violating the Constitution, I have found people understand that. The fact that we have lobbyists calling up telling us to do this does not mean we have to do it.

I urge my colleagues to reject this amendment. I preserve my ability to offer a constitutional point of order if the motion to table fails. I reserve the right to offer a second-degree amendment which would require the insurance rates to be raised to pay for any takings, but I hope those will not be necessary.

This is not a good amendment. I know there are a lot of interests for it, but it is not a good amendment. I urge my colleagues to take the long view on this and not vote for it so we are not back here in 2 years trying to come up with billions of dollars to pay off these lawsuits.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSON. Mr. President, I yield 5 minutes to my colleague from Nebraska, Senator KERREY, a cosponsor of the amendment.

Mr. KERREY. Mr. President, first, I thank the distinguished Senator from Texas and the Senator from Maryland. There are a number of provisions in this legislation for which I thank them.

One of the things all of us have to do when looking at this piece of legislation is ask the question whether or not we are going to be able to maintain the safety and soundness of the banking system. It is a pretty dramatic change allowing companies that previously had been prohibited in certain lines of business to engage in those lines of business.

I want to make it clear, I reached the conclusion that we do have the regulatory capacity to maintain safety and soundness, whichever piece of legislation emerges here. I appreciate very much the work of the Senator from Texas on this, as well as the work of the Senator from Maryland.

I will point out a couple of things, as well, that I am very much grateful for, and one of them has to do with modernizing the Federal Home Loan Bank System that allows rural banks and other banks to have access to credit. I think it is a very important provision. Senator HAGEL offered it, and I commend him for his leadership on it.

I also want to make it clear on the CRA, at some point it is going to get to conference. I do support what Senator GRAMM is doing to provide exemptions to banks under $100 million. Under urgings, I had conversations with my larger banks who do not find themselves with the kind of difficulties of being coerced into making payments, as he noted exists in other parts of the country. While I support under 100, I do not support the other changes that are being proposed.

As to this amendment, the takings issue, Congress does this all the time. In fact, my guess is there could be people who make a claim that because the bill itself is passing, they are going to suffer a loss of value in their business.

Gosh, we debate the ethanol provision and we debate tax credits for the oil industry all the time. Sometimes you get it, sometimes you do not get it, but you do not file a claim against the Government as a consequence of that action.

People could file a takings action against this bill based upon what the Senator from Texas just argued. The Winstar case does not open up the door. Indeed, the Winstar case is being appealed itself. The Winstar case does not open up the door to prevent Congress from passing legislation in trying to modernize our banking system.

Mr. JOHNSON. Will the Senator yield?

Mr. KERREY. Yes, I yield.

Mr. JOHNSON. Does the Senator not agree that the Winstar case was a contract violation case as opposed to the statutory change of regulation being proposed here?

Mr. KERREY. I quite agree. Not only is it a contract case, but the decision by the D.C. Court of Claims is on appeal. We do not know what the outcome is going to be. It was a specific contract that was signed between the Government and these businesses. They have a legitimate case that they are making that a contract was broken.

If the takings argument is going to provoke a fear every single time Congress proposes a change in the law, it is going to make it awfully difficult for Congress to do the very thing that the Senator from Texas, the Senator from Maryland, and the Banking Committee is proposing to us, which is that we ought to modernize our banking system. There will be losers as a consequence.

Can you imagine coming to the floor and saying, we cannot pass fast track? There are losers when we have free trade. So if I vote for fast track, and we give the President normal trade negotiating authority, and somebody

loses, can they file a claim as a consequence and say I have taken their property? No.

So I appreciate very much some of the other arguments the Senator from Texas is making, but I think the takings argument would cause this Congress a great deal of difficulty. In fact, we should withdraw the bill altogether if takings is the concern that we have, because there will be losers. There will be economic losers as a consequence of this piece of legislation who could, if they chose to, file a takings action based upon the argument that was made earlier.

This is a fairly simple amendment. I urge colleagues to look at it. The concern that the Senator from Texas is raising may be a legitimate concern. Some of the details he was talking about may need to be modified. But we are saying that, ''Notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after May . . . unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association). . . .''

It is an attempt to say, yes, we needed to do what the Senator from Texas described earlier in order to be able to clean up the savings and loan problem.

We make no judgment here that the unitary thrifts are not safe or sound. We have an outstanding one in the State of Nebraska that is doing a tremendous amount of business, and they are a very safe operation, very sound operation. We make no judgment about that at all. But we are just saying the Banking Committee already has spoken on the issue by eliminating the commercial market basket.

What we are doing with this is to prevent further kinds of transactions precisely because we are ending the restrictions that were under Glass-Steagall for 60 years. We are eliminating those. We are going to get all kinds of new transactions going on in that environment anyway. We are concerned about whether or not we are going to maintain safety and soundness.

I believe we can. I believe we can in the new regulatory environment. I am willing to do that. But this just adds considerable new risk to the transaction, considerable new risk. I believe the Office of Thrift Supervision is down to about 1,200 employees. I am not sure they have the capacity to regulate. It provokes a whole new concern about this legislation, as to whether or not we are going to be able to maintain the safety and soundness that the people of the United States of America expect.

To be clear, I have not had a single citizen in Nebraska come to me and say, ''I need financial services modernization''—that is, borrowers and depositors. Indeed, I have only a few banks in Nebraska altogether that are interested in this. The people who are interested in this are people who are much larger operators. They have come to me and asked my support for this legislation, and I have given it to them. I do not believe there is any more reason for us to maintain these barriers between these various industries. But we need to be very careful.

The PRESIDING OFFICER. The Senator's 5 minutes has expired.

Mr. KERREY. Thirty seconds.

Mr. JOHNSON. I yield the Senator 30 more seconds.

Mr. KERREY. I believe we need to be very careful not to increase, in an unnecessary fashion, that risk. And this amendment will reduce that risk. It will not increase takings claims against the Government. It will not increase litigation as a consequence of saying that we are not going to allow continued and new unitary thrift acquisition and new commercial interests to come in and purchase savings and loans.

Mr. President, I appreciate the fine work the Senator from Texas has done and the Senator from Maryland has done. I hope we can get this legislation in a form that I can support, because I believe financial services modernization is something that has long been needed and is long overdue.

Mr. JOHNSON. How much time remains on our side?

The PRESIDING OFFICER. Senator GRAMM has 6 minutes 20 seconds; the Senator from South Dakota has 17 minutes 9 seconds.

Mr. JOHNSON. I yield 5 minutes to my colleague and cosponsor of this amendment, Senator THOMAS from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Thank you, Mr. President. I thank you very much for the opportunity to discuss this important issue.

First, let me, too, say that I appreciate the work that is being done on this whole financial modernization bill. I think it is something that certainly needs to be done and that I support.

I also believe very strongly in what the Senator from Nebraska has just said with regard to takings—that the idea that we cannot change the rules in the Congress without it being exposed to takings is one that is very threatening. I think that is the case.

So I am very pleased to be a sponsor of this thrift charter amendment with my colleagues, Senator JOHNSON and Senator KERREY. I think the amendment will improve the underlying legislation by stopping a mixture of banking and commerce through the unitary thrift charter arrangement.

This amendment freezes the number of commercially owned thrifts and bans the future number of sales of unitary thrift charters to commercial entities. Commercial firms that already own thrifts would be able to continue the endeavor, and they are grandfathered.

The integration of banking and commerce raises significant questions about the concentration of economic resources. I happen to be chairman of the Subcommittee on Asia and the Pacific Rim and have had some opportunities recently to be in South Korea and Japan. I have to tell you that I am impressed with the problems they have had with that kind of integration, and I do not want us to get into that.

I have already mentioned that I do not believe this is a taking. I believe this is actually a change in direction, one that very much needs to be made, and I think it will help us in terms of this mixing of banking and commerce. It is a significant cause for the Asian economic crisis.

I believe we should learn from the lessons of the Asia financial crisis and be very careful about this integration. I think this will help do that.

In testimony before the Banking Committee last year, Federal Reserve Chairman Alan Greenspan spoke to the risks that can arise if the relationships continue between banking and commercial firms. Both he and Secretary Rubin have testified to the need for closing the loophole. This amendment secures the safety and soundness of our financial system, and I urge that it be supported.

Let me just comment on some things that very knowledgeable people have said.

Secretary Rubin has said:

> [W]e support the prohibition against forming additional unitary holding companies, and [we] would further support an amendment terminating the grandfather rights. . . .

Former Federal Reserve Board Governor Paul Volcker said:

> Recent experience with the banking crises in countries as different in their stages of development as Japan, Indonesia, and Russia demonstrates the folly of permitting industrial-financial conglomerates to dominate financial markets and potentially larger areas of the economy.

The American Bankers Association, which has studied this very carefully, said:

> [C]ommercial and banking should not be allowed to mix in the wholesale fashion permitted under the unitary thrift concept. . . .

The Independent Bankers Association of America said:

> IBAA cannot support, and will oppose, any legislation that does not narrow the unitary thrift holding company loophole.

The Consumers Union said:

> We oppose permitting federally-insured institutions to combine with commercial interests because of the potential to skew the availability of credit. . . .

I close by saying that a mixture of banking and commerce is widely considered to be a significant cause of the recent Asian economic crisis. As Federal Reserve Board Chairman Alan Greenspan testified last year before the Senate Banking Committee:

> The Asia crisis has highlighted some of the risks that can arise if relationships between banks and commercial firms are too close.

Mr. President, I hope we will adopt this amendment. I think it strengthens

the overall bill. I certainly intend to support the bill and intend to support this amendment. I urge support of it.

I yield the floor.

Mr. JOHNSON. I yield 5 minutes to my ranking member of the committee, Senator SARBANES.

Mr. SARBANES. I commend the very able Senator from South Dakota and his colleague from Wyoming for offering this amendment. I think it is a very important amendment. They have made some very strong arguments for it.

Both Chairman Greenspan and Secretary Rubin, who differ on other aspects of this legislation that is before us, are in agreement, along with Chairman Volcker and Henry Kaufman, and many others who have examined this issue, that we need to address this question.

It is called the unitary thrift loophole, because over time the powers of the thrifts have been expanded. So a provision, which at an early time may not have appeared to be a loophole, now becomes a loophole through which commercial companies can acquire thrifts and, in effect, eliminate the line drawn between banking and commerce.

The recent experience with banking crises in other countries—Japan, Korea, and so forth—where they had industrial financial conglomerates, indicates the difficulties and the dangers of allowing these arrangements.

I want to address very specifically the argument of limiting the transferability of a unitary thrift holding company—and this would limit it only in terms of being transferred to a commercial company; it would not limit it in terms of being transferred to a financial company. It would be unfair because companies bought thrifts at a time when they could sell them to any commercial company, and it is now being asserted that this would be a taking under the fifth amendment of the Constitution or perhaps, alternatively, a breach of contract by the government.

You cannot keep people from making any argument that is available to them. They can sort of reach out and grab hold of any argument that exists and sort of bring it in and try to set it down here in the middle of the Senate and say, aha, here is this argument and you have to pay attention to it.

You need to look at the argument and what is involved.

Let me just for a moment analyze this argument that it is a taking. The Supreme Court's rulings in the area of the fifth amendment takings of property have generally dealt with real property, not with business charters issued by the government, such as a thrift charter. However, even if a thrift charter did qualify as property for taking purposes, prohibiting transfers of thrifts to commercial companies would not give rise to liability under the standards which the courts have used to require compensation.

It is being asserted here that this is going to be a taking; you are going to have to pay compensation. Then you have to take a look at it. Is this limitation that is involved in this amendment, this limited limitation with respect to the transferability of this thrift, is that going to be considered a taking by the court? I submit it would not give rise to liability under the standards which the courts have used to require compensation. Courts have held that no compensation is owed if there is not an invasion of the property or a total diminution of economic value of the property. Closing the loophole would not involve either of these two things.

There is a considerable value in the thrift charter which would continue even if this limited amount of transferability is no longer permitted. In fact, these thrifts may be sold to thousands of other thrifts, banks, securities broker dealers, insurance companies and other financial companies under this legislation. Of course, this is the very kind of transfer that occurs in the vast majority of thrift transfers. It is to some other financial institution.

Of course, the legislation would permit that, and this amendment does not touch that. The potential for change in the powers of a unitary thrift holding company is in fact inherent in having an S&L charter. The holder of a federally granted charter cannot expect that the government will never change the laws under which the charter operates. The Constitution does not guarantee that a company allowed to engage in some activity will have the right to continue to do so in perpetuity.

I am as sensitive as any to the takings question. It is a very important part of our Constitution. It is an important part of the workings of our economic system. But we need to look at the cases in terms of what the court has interpreted as constitutional. We need to exercise some practical sense judgments. Clearly, the law has never been that a company engaged in some activities can never be limited or restrained by the government and has that right to go on in perpetuity. In the past, Congress has changed statutes governing savings associations and has required compliance with the amended statute.

In 1987, Congress imposed a qualified thrift lender test requiring thrifts to hold a percentage of their total assets as qualified thrift investments. New requirement. New limitation. A unitary thrift holding company owning a thrift that failed to comply with those new requirements would have been required to divest its commercial activities.

Also in 1987, we limited the transferability of nonbank banks by requiring that upon transfer the new owner bank would be required to register as a bank holding company. These actions have not been found to be takings.

Let me turn to the other possible argument; that is, that there is a breach of contract by the government.

The argument has been raised that closing the loophole may break a supposed contract. The Winstar case, U.S. v. Winstar Corporation et al, 518 U.S. 839, a 1996 case, has been used as a basis for this concern. However, closing the unitary thrift loophole involves facts that are materially different from those on which the case of U.S. v. Winstar Corporation was decided. In Winstar, the Supreme Court determined that the United States had made specific contractual promises to acquirers of failed thrifts and had breached those specific contractual promises.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. SARBANES. How much time does the Senator have remaining?

The PRESIDING OFFICER. Five minutes 17 seconds.

Mr. SARBANES. Will the Senator yield me 2 more minutes?

Mr. JOHNSON. I yield such time as the gentleman requires.

Mr. SARBANES. The court found the government liable for breaching its contracts by not permitting the thrifts to count goodwill and capital credits toward regulatory capital requirements after the enactment of FIRREA. There had been a specific undertaking in the S&L cases that those goodwill arrangements could be counted and, in fact, they wouldn't have taken over the failed thrifts had they not been able to do so.

It is vastly different from the situation that we are confronting here.

There are no specific contracts here that promise acquirers of thrifts that they could sell them to commercial companies or that the law governing permissible thrift affiliations would never change. Prohibiting unitaries from affiliating with commercial companies is no different than many prohibitions the government legislatively imposes on industries each year with no financial liability to the government.

The difference with the supervisory goodwill cases couldn't be clearer. Those cases were based upon contract law. No contracts are involved in the unitary provisions of H.R. 10. No guarantee was made by anyone that these affiliations with a commercial firm could continue and the government is entitled, in order to achieve important public policy objectives, to make reasonable changes. I submit to you that this is one such reasonable change in order to ensure that the dividing line between banking and commerce remain firm.

All of the people have told us about the dangers of mixing banking and commerce. From the Fed, Alan Greenspan says:

> Failure to close this loophole now would allow the conflicts inherent in banking and commerce combinations to further develop in our economy and complicate efforts to create a fair and level playing field for all financial service providers.

Secretary Rubin has echoed those comments, as has Paul Volcker and many other distinguished commentators.

Mr. President, I reserve the remainder of our time. How much time is remaining?

The PRESIDING OFFICER. Twelve minutes 26 seconds.

Mr. GRAMM. Mr. President, how much time do we have?

The PRESIDING OFFICER. You have 6 minutes 20 seconds.

Mr. GRAMM. Six minutes. I yield 2 minutes of it to the distinguished Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, 2 minutes is all I will need.

In a perfect world, I would oppose the amendment with respect to the unitary thrift situation, but as the Senator from Texas has made clear, we do not live in a perfect theoretical world. We have existing institutions who have obligations to their shareholders and who have past history. However much I might like to see the past history be different, it is as it is.

Under those circumstances, I think we cannot penalize people who have gone forward on assurances from the Federal Government and say that those assurances will not now be honored just because we do not think they should have been given in the first place.

For that reason, Mr. President, I will be joining with the chairman of the committee and voting as he does on this issue.

I yield the floor.

Mr. GRAMM. Mr. President, as a courtesy to Senator JOHNSON, let me conclude my remarks, and then let him give the concluding remarks on the amendment.

First of all, we have had several references to the Asian crisis. I want to remind my colleagues that the Asian crisis was banking and government, not banking and commerce.

The second point is that Ford Motors, for example, at the strong urging of the Federal Home Loan Bank Board, put a billion dollars into Nationwide in the 1980s, and that billion dollars reduced the amount the taxpayer had to pay to guarantee those deposits by a billion dollars.

Here is the point. Nobody makes you go into some industry where your tax laws might be changed ex post facto. I am not for ex post facto laws, but we have passed them from time to time. But in this case, these thrifts were requested, asked, begged to make investments in the S&L industry for the benefit of the taxpayer and the insurance fund. I just want to read a couple of lines from some letters.

This is from the National Retail Federation:

> Seventy-nine failing thrifts were purchased and infused with $3 billion of new capital. Had these institutions undergone liquidation at taxpayers' expense, the cost would have been billions more. Capital from our industries looked pretty good at the time. We don't see what has changed.

They put up $3 billion to go into industries that let them be in retailing and in the S&L business, and now we are going to say to them, if you sell your holding company, you are going to have to tear up your business, drive down its value by 10 or 15 percent. They don't understand how we changed the rules of the game when they were asked to get into the business.

The National Association of Manufacturers wrote:

> Unitary thrifts were established in 1967 to attract private capital into the thrift industry during the thrift crisis. The National Association of Manufacturers' members responded, saving the taxpayer billions of dollars. Putative grandfathering of existing unitary thrifts serves only to eliminate competition and innovation.

I could read from the Home Builders, and others, but the bottom line is this: These companies have a case that they were urged to invest this money by the Government based on a set of rules. If we now come in and change the value of their companies on the equity market instantaneously by 10 or 20 percent, I believe there has been a taking, and I think most people would believe there has been a taking. As we all know, the Supreme Court has been increasingly willing in cases such as Lucas v. South Carolina and Dolan v. City to rule on takings, and to force the Federal Government to pay for it.

So if this amendment is adopted, I believe it would probably be prudent to have a second-degree amendment, which I hope would be agreed to, which would simply say that if there are court rulings that there has been a takings, we should raise the fees for the insurance fund to pay those costs, rather than letting those costs fall on the taxpayer.

Mr. President, I yield back the balance of my time.

Mr. JOHNSON addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. JOHNSON. Mr. President, I commend the chairman for his work on the differential issue, which was originally a component of the Johnson-Thomas amendment. But we need to go further. It is an opportunity for this body to implement a financial services policy consistent with where both the banking and consumer organizations of the country want to go to implement policy that is agreed upon, in the agreed-upon direction that Mr. Greenspan and Mr. Rubin want to go. This is an opportunity that we cannot allow to be missed.

Mr. SARBANES. Will the Senator yield?

Mr. JOHNSON. Yes.

Mr. SARBANES. Mr. President, I commend the able Senator from South Dakota because the amendment, as he was going to originally propose it, included this closing of the unitary thrift company loophole but maintained the existing law on the differential payment by the S&L's and the banks. The chairman offered that and it was accepted earlier this morning. I think the fact that it was embraced—and I think the adoption of that amendment should be taken in the context of this amendment—reflects an effort to come up with a very balanced approach on the part of the able Senator from South Dakota.

Mr. JOHNSON. I thank the Senator. It would seem to me at this point there is no constitutional mandate that for some reason we must go down the road of mixing banking and commerce, that that is some of an irretrievable decision that is made and we are unable now to change that policy. This is an opportunity, I believe, to do what needs to be done in this legislation. One, to strike the provision of the bill which would, as it stands, permit commercial firms to acquire any of the 500 existing unitary thrift holding companies. And our amendment inserts a provision to allow existing unitary thrift holding companies to be transferred only to financial firms.

There are thousands of financial firms. The marketability of these unitary thrifts will remain high; there is no question about that. So I believe this is an amendment that is badly needed if this bill is going to ultimately be signed by the President. But it is also an amendment that is necessary for us to embark on what I think is a sensible and prudent fiscal policy, financial policy for this country. I ask support for the Johnson-Thomas amendment.

I yield back such time as I may have remaining.

Mr. GRAMM. Mr. President, I ask unanimous consent that following debate time on the pending amendment, it be temporarily set aside and the vote occur on or in relation to the Johnson amendment No. 309 at 3:45.

Let me also say, in fairness to Senator JOHNSON, why don't we have 5 minutes each at that point. We can probably do it a little faster. Would 3 minutes work for the Senator?

Mr. JOHNSON. Two or 3 minutes would be fine.

Mr. GRAMM. I ask that we have 3 minutes each prior to the vote to give each side an opportunity to restate the issue at that point.

Mr. SARBANES. If I could put a question to the chairman. There would be no intervening business between now and the vote on or in relation to the Johnson amendment, other than the debate time?

Mr. GRAMM. That's correct.

Mr. SARBANES. No intervening business with respect to this amendment?

Mr. GRAMM. Right. We are going to do a lot of other business, though.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Mr. President, I think we have come to the point where we are ready to begin debate on the question of whether or not banks should be able to provide broad financial services within the bank itself, or whether it should do so outside the bank. So let me request that Senator SHELBY and

all those who wish to debate this issue come over. I am going to suggest the absence of a quorum for 15 minutes or so to give everybody an opportunity to come over.

I am hopeful that with a good outcome on this coming vote, we will be well on our way to passing this bill. I urge, again, anyone who has an amendment, Senator SARBANES and I are willing to look at them to see if we can take them, so please let us see that amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBB. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. VOINOVICH). Without objection, it is so ordered.

Mr. ROBB. Mr. President, I ask unanimous consent I be permitted to speak in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. ROBB pertaining to the introduction of S. 973 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. ROBB. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I ask unanimous consent I be allowed to proceed in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

VIOLENCE IN OUR SOCIETY

Mr. LEVIN. Mr. President, earlier this week I addressed the Economic Club of Detroit, one of the most influential groups of community leaders in my State. I expressed the depth of my continuing concern about the level of violence in our society, particularly youth violence. I committed myself to continue to speak out against the easy access to guns, especially by young people. I intend to comment on this subject every week in the Senate, when the Senate is in session, to highlight the need of our Nation to face this critical issue, to discuss the growing crisis fueled by weapons among our young people, and to urge action to meet our responsibility in the Senate to work towards solutions.

There is no one cause of youth violence. The causes are many. But among them there is one that cannot be ignored or denied, the easy access to deadly weapons for our young people. If we are honest with ourselves, we will admit it is too easy for children to get their hands on guns because we made it too easy to get guns, period; too easy to get guns that have nothing to do with the needs of hunters and sportsmen, guns that are too often used to kill people.

Yes, we have all heard the glib rhetoric of the NRA, that ''guns don't kill people, people kill people.'' This bumper-sticker logic obscures the real truth. People with guns kill people, and they do it some 35,000 times a year in this country. That is more deaths than we suffered in the 3-year-long Korean war. The number of times that handguns were used to commit murder is itself staggering, some 9,300 times in the United States in 1996. In that same year in Japan, a nation almost half our size, there were 15 murders with handguns—just 15 handgun murders for a country with half our population. There were 9,300 murders here in the United States.

We have every right as parents and as consumers to expect some responsibility from the entertainment industry. But I am told Japanese popular culture is even more violent than our own.

However severe this plague of gun violence is for society as a whole, for the young it is far worse. For young males, the firearm death rate is nearly twice that of all other diseases combined. A National Centers for Disease Control study found 2 of every 25 high school students reported having carried a gun in the previous 30 days. If those numbers were evenly distributed among communities and schools, that would mean that in the average classroom, two students have carried guns at some time in the previous month.

These figures are shocking, but they are hardly secret. We have grown so accustomed to the carnage that guns cause in America that only the most horrific acts of violence are capable of shaking us from our slumber. As I told the Economic Club of Detroit, the question we have to ask ourselves in the wake of the Columbine High School tragedy is: Are we willing to say that enough is enough? And will we say it not just today but next week and next month and next year?

The NRA is betting we will not. They believe their brand of single-minded, single-issue politics can once again paralyze us from acting, once these images of death and pain in Colorado fade from view. They are going to go on telling their members that even the most measured gun control proposal is a thinly veiled attempt to take away their legitimate hunting weapons. It will not stop there. They will use that membership as a potent political tool to intimidate candidates for office. It is a sad fact that, thus far, too many Americans and too many American children and their parents live in fear of gun violence because too many of us in Washington live in fear of the political power of the lobbyists of the NRA.

I believe there is also a power when people unite to demand action—businesspeople, labor union people, parents, teachers, police officers, young people, the clergy. When I look at the kind of coalition that could be represented by groups like that, I see a potential power that could dwarf any narrow special interest. The question is not whether we are in the majority. The polls show that a large majority of Americans will support strong action to reduce access of minors to guns. The question is not whether we have the power. We do. The question is whether we are willing to act to make America a safer country. For starters, we must ban the possession and sale of handguns, semiautomatic weapons, by and to minors.

We paused in this Chamber to observe a moment of silence in honor of the victims of gun violence in Colorado. We observe these moments of silence to pay tribute to those who have died and to express our sympathy for their loved ones. But now, with this latest tribute behind us, we need to be anything but silent. Those of us who want to act to reduce the gun violence need to be louder and clearer and stronger and, yes, more persistent than the NRA.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FINANCIAL SERVICES MODERNIZATION ACT OF 1999

The Senate continued with the consideration of the bill.

Mr. GRAMM. Mr. President, I ask unanimous consent that when Senator SHELBY offers an amendment related to operating subsidiaries there be 2 hours equally divided in the usual form prior to a motion to table, and that no amendments or other motions be in order to the amendment prior to the vote on tabling.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I have sought recognition, because I intend to offer a couple of amendments to the pending legislation. I would like to discuss the underlying bill just a bit more, and then also offer the amendments and discuss the amendments.

I spoke earlier today about this legislation, which is called the Financial